Supreme Court, U. S.
FILED
MAY 24 1978
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-803

WILLIAM G. BARRY, as Chairman of the New York State Racing and Wagering Board, et al.,

Appellants,

against

JOHN BARCHI,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Docketed December 5, 1977

Probable Jurisdiction Noted March 20, 1978

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Relevant Docket Entries.

76 Civ. 3070 BARCHI vs SARAFAN, GOETTEL, J.

DATE	NR.	PROCEEDINGS
12-76	1	Filed complaint and issued summons; and APPLICATION FOR 3-JUDGE COURT.
07-12-76	2	Filed pltfs affdt. and OSC with a temporary restraining order — Ordered that defts show cause on 7-20-76 in rm 506 at 10:30 pending determination deft. should not be temp. restrained from enforcing the determination of defts that trainer's license of pltf. be suspended, security in the sum of $1,500.00 shall be posted by pltf. within 48 hours and service is to be made by 7-13-75 by 5 pm — Ward, J.
07-12-76	3	Filed plantiff's memorandum of law in support of above order to show cause.
07-14-76	4	Filed bond #J9026009 for undertaking on injunction in the amount of $1,500.00 by Fidelity and Deposit Company of Maryland
07-16-76	5	Filed affdvt. of service of Order to Show Cause by Joseph Feraldo served upon — Bertram Sarafan, Joseph Boyd, Eugene Keogh on 7-13-76
07-16-76		—Filed affdvt. of service of Order to Show Cause by Rudolph E. Greco served — upon Hon. Louis Lefkowitz Atty. Gen. of NYS on 7-13-76
07-16-76		—Filed affdvt. of service by James Brandi of Order to Show Cause and Summons and complaint served—upon Hon. Hugh Carey, Governor of NY State on 7-13-76 (all under the same cover)
07-20-76	6	Filed pltf. supplemental affdvt. in support of pltf's motion for a temporary stay of injunction prohibiting enforcement of sect. 8022

Relevant Docket Entries.

DATE	NR.	PROCEEDINGS
07-20-76	7	Filed pltf. Amended Complaint
08-10-76	8	Filed pltf's Reply memorandum of law
08-18-76	9	Filed memo. end. on document #2 Adjourned to Aug. 17, 1976 at 10:AM Temporary restraining order continued in effect until further, order of this court So Ordered—Goettel, J. m/n
09-03-76	10	Filed affdvt. of Lucien Fontaine in re to his suspention
09-03-76	11	Filed affdvt. of affdvt. of Joseph A. Faraldo in opposition to the regulatory statutes are worded differently
10-04-76	12	Filed pltf's Reply memorandum of law
12-29-76	13	Filed affdvt John M. Dailey in opposition to pltfs motions
12-29-76	14	Filed defs memorandum of law
12-29-76	15	Filed defts supplementary memorandum of law
12-28-76	16	Filed OPINION #45477 . . . Defendants motion to dismiss is denied. Plaintiffs application for 3-JUDGE COURT under 28:2881 is hereby granted. Defendants motion was denied pending further consideration by the three-judge court, which hereby convened.—Goettel, J. m/n
04-13-77	17	Filed plaintiff's brief
04-13-77	18	Filed pltf's pleadings, order to show cause and asscopanying (sic) affdvts
07-15-77	19	*Filed Transcript of record of proceedings, dated* 5-4-77
08-19-77	20	Filed defts memorandum of lae (sic)
08-19-77	21	Filed deft. Standardbred Owners Ass'n brief Amicius

Relevant Docket Entries.

DATE	NR.	PROCEEDINGS
08-22-77	22	Filed ORDER designatting William H. Timbers US Circut Judge, Thomas P. Griesa US Dist. Judge in additional to Judge Goettel m/n
08-19-77	23	*Filed Transcript of record of proceedings, dated* 5-4-77
08-19-77	25	Filed OPINION #46286 On December 23, 1976 defts motion to dismiss was denied and a three-judge court was convened. The Court finds N.Y. Uncons. Law SEC. 8022 unconstitutional for two distinct reasons indicated herein a separate classification lacking a rational basis reasonably connected to the state's interests—in violation of pltf's right to equal protection of the law So Ordered Timers, C.J. Goettel, J.
08-24-77	26	Filed ANSWER of defts
09-15-77	27	Filed JUDGMENT Now, on motion of Greco & Faraldo, the unconsolidated laws of the State of NY are declared to be unconstitutional in that it permits the State to irreparable (sic) sanction a harness race horse trainer without a pre-suspension or a promt post-suspension hearin (sic) in violation of pltf right to due process and it prohibits stays etc., defts are enjoined from enforcing said statute and that the fifteen (15) day suspension imposed upon pltf. to have commenced on the 7-10-76 has it not been stayed by this Court and is declared to be invalid and nullified—Goettel, J. Judgment Entered on 9015-77 m/n
09-07-77	28	Filed AMENDMENT TO OPINION #46286
09-16-77	29	Filed defts notice of appeal to the USCA for the Second Circuit from the final Order and declaratory judgment entered on 8-9-77 mailed copy to Greco & Faraldo.

Relevant Docket Entries.

DATE	NR.	PROCEEDINGS
09-26-77	30	Filed defts notice of appeal to Supreme Court State of New York from the final judgment entered on 9-15-77. Mailed copy to Greco & Faraldo.
10-13-77	31	Filed stip. and Order that the deft's appeal to the USCA is voluntarily dismissed—Goettel, J.
10-02-77	32	Filed notice of entry of judgment by Greco & Faraldo filed 9-12-77
11-02-77	33	Filed pltf's affdvt. and notice of motion for an order discharging Fidelity and Deposit Co. from all liability on Bond #J9026009 ret. 11-11-77
12-14-77	34	Filed memo. end. on document #32 Motion granted on default—Goettel, J. m/n
12-13-77	35	Filed Order on the motion of pltf. It is Ordered that Fidelity and Deposit Co. of Maryland Be released of all liability on Bond #J9026009—Goettle, J. m/n
03-24-78	36	Filed true copy of USCA statement of jurisdiction (sic) by the Clerk of the Supreme Court
04-07-78	37	Filed Exparte Order transmitting Record to the Supreme Court of the United States—Goettel, J. m/n
04-10-78	38	Filed notice of original record on appeal has been certified and transmitted to USCA for the Second Circuit (sic) on 4-10-78

Amended Complaint.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 Civ. 3070 GLG

JOHN BARCHI,

Plaintiff,

against

BERTRAM D. SARAFAN, as Chairman and JOSEPH H. BOYD, JR., and EUGENE J. KEOGH, as Members of the New York STATE RACING & WAGERING BOARD, Division of Harness Racing, HON. HUGH CAREY, Governor of the State of New York, and HON. LOUIS J. LEFKOWITZ, Attorney General of the State of New York,

Defendants.

Plaintiff, by his attorneys, Greco & Faraldo, for his Amended Complaint, alleges as follows:

FIRST: Jurisdiction of this Court is invoked pursuant to 42 U.S.C. 1983 and 28 U.S.C. 1343 (3) to convene a three judge court pursuant to 28 U.S.C. 2281 et seq. to enjoin the enforcement, operation and execution of Section 8022 of the Unconsolidated Laws of the State of New York and Rule 4105.8 (f) promulgated by the New York State Racing and Wagering Board in furtherance thereof, for Unconstitutionality and pursuant to pendente jurisdiction to enjoin the enforcement, operation and execution of Rules 4120.5, 4120.6 and 4116.11 of the New York State Racing & Wagering Board, also for Unconstitutionality.

COUNT ONE

SECOND: That at all times hereinafter mentioned, plaintiff was and still is a licensed harness racing trainer pursuant to Rule 4101.24 of the New York State Harness Racing Commission of the New York State Racing & Wagering Board.

THIRD: That at all times hereinafter mentioned, defendant, Bertram D. Sarafan was and still is chairman and defendants Joseph H. Boyd, Jr. and Eugene J. Keogh were and still are members of the New York State Racing & Wagering Board, Division of Harness Racing.

FOURTH: That at all times hereinafter mentioned, defendant Carey was and still is the Governor of the State of New York, charged with the administration of the laws of the State.

FIFTH: That at all times hereinafter mentioned, defendant, Lefkowitz, was and still is the attorney general of the State of New York, and as such, is chief legal officer of the State.

SIXTH: That at all times hereinafter mentioned, plaintiff was the trainer of a horse known as "Be Alert", that raced at Monticello Raceway and owned by one Walter Littman.

SEVENTH: That on or about the 22nd day of June, 1976, the said horse known as "Be Alert" ran in the third race at Monticello Raceway and finished second in said race.

EIGHTH: That on or about the 24th day of June, 1976, plaintiff was given notice by John F. Fay, the official Steward-Presiding Judge of the New York State Racing &

Wagering Board appointed to supervise all race meetings at the Monticello Raceway that urine tests had revealed that "Be Alert" had improperly been treated with the drug "Lasix" in violation of Rule 4120.4 of the Rules of the New York State Racing & Wagering Board, that prohibits such treatment to harness racing horse within forty-eight hours of a race.

NINTH: That the investigation of the charge was assigned to Daniel Goldberg, Chief Investigator of the New York State Racing & Wagering Board.

TENTH: That plaintiff did not treat "Be Alert" with Lasix as charged and denied to both John F. Fay and Daniel Goldberg that he had so treated the horse.

ELEVENTH: That on the 28th day of June, 1976, Victor C. Kaufman of New York Lie Detection Laboratories did administer to plaintiff a lie detector test at his own request and made findings that plaintiff had answered all questions truthfully in denying that he had administered Lasix to "Be Alert", a copy of the result of the examination and credentials of the examiner being herein annexed.

TWELFTH: That on the 29th day of June, 1976, the New York State Racing & Wagering Board did have a lie detector test of its own administered to the plaintiff, which, upon information and belief, plaintiff did likewise pass, but declined to furnish plaintiff with a copy thereof.

THIRTEENTH: That effective on the 10th day of July, 1976, defendant, Bertram Sarafan, as Chairman and defendants Joseph H. Boyd, Jr. and Eugene J. Keogh did suspend plaintiff for fifteen days for violation of Rules 4120.5, 4120.6 and 4116.11, by the alleged administration

of Lasix to "Be Alert", without affording plaintiff a hearing, despite the absence of any emergency situation calling for a dispensation of such procedural due process requirement, pursuant to the authority of Section 8022 of the Unconsolidated Laws of the State of New York, which provides as follows:

> "If the State harness racing commission shall refuse to grant a license applied for under this act, or shall revoke or suspend such a license granted by it, or shall impose a monetary fine upon a participant in harness racing the applicant or licensee or party fined may demand, within ten days after notice of the said act of the commission, a hearing before the commission and the commission shall give prompt notice of a time and place for such hearing at which the commission will hear such applicant or licensee or party fined in reference thereto. Pending such hearing and final determination thereon, the action of the commission in refusing to grant or in revoking or suspending a license or in imposing a monetary fine shall remain in full force and effect. The commission may continue such hearing from time to time for the convenience of the parties. Any of the parties affected by such hearing may be represented by counsel, and the commission may be represented by the attorney-general, a deputy attorney general or its counsel. In the conduct of such hearing the commission shall not be bound by technical rules of evidence, but all evidence offered before the commission shall be reduced to writing, and such evidence together with the exhibits, if any, and the findings of the commission, shall be permanently preserved and shall constitute the record of the commission in such case. In connection with such hearing, each member of the commission shall have the power to administer oaths and examine witnesses, and may issue subpoenas to compel attendance of witness, and the production of all material and relevant reports, books, papers, documents, correspondence and other evidence. The commission may, if occasion shall require, by order, refer to one or more of its members or officers, the duty of taking testimony in such matter, and to report thereon to the commission, but no determination shall be made therein except by the commission. Within thirty days after the conclusion of such hearing, the commission shall make a final order in writing, setting forth the reasons for the action taken by it and a licensee or party fined, as the case may be. The action of the commission in refusing to grant a license or in revoking or suspending a license or in imposing a monetary fine shall be reviewable in the Supreme Court in the manner provided by the provisions of article seventy-eight of the civil practice law and rules."

THIRTEENTH: That plaintiff has suffered irreparable damage by the fifteen day suspension, which deprives him of continuity of his occupation as a trainer for the various owners of harness race horses, that require continuous care, thereby endangering his business relationship with said owners, who will be obliged to seek out other trainers; that in addition, plaintiff has suffered irreparable damage by reason of the potential loss of income during the fifteen day period that could amount to as high as five to ten thousand dollars and which cannot be made up, by reason of the harness races for which he will be ineligible.

FOURTEENTH: That the administrative appellate remedy the commission provided by Section 8022 of the New York State Unconsolidated Laws and Rule 4121.5 is inadequate, in that Section 8022 provides that "pending such hearing and final determination thereon, the action of the commis-

sion . . . in revoking or suspending a license . . . shall remain in full force and effect" and the administrative appeal will not come on to be heard until far beyond the fifteen day suspension period, thereby precluding any possibility of meaningful administrative review or relief for the plaintiff.

FIFTEENTH: That section 8022 of the New York State Unconsolidated Laws is Unconstitutional in violation of the Fourteenth Amendment and 42 U.S.C. 1983 in that defendants Bertram D. Sarafan as Chairman and Joseph H. Boyd, Jr. and Eugene J. Keogh, acting under color of the laws of the State of New York, have deprived plaintiff of his Constitutional right to opportunity for a hearing prior to the imposition of administrative punishment, absent an emergency situation.

SIXTEENTH: That as a result of the premises, plaintiff is entitled to judgment against defendants enjoining the enforcement and execution of Section 8022 of the Unconsolidated Laws of the State of New York and Rule 4105.8(f) promulgated in furtherance thereof and for a declaration of their invalidity as violative of due process of law secured by the Fourteenth Amendment, pursuant to 28 U.S.C. 2281. Rule 4105.8 authorizing summary punishment, providing as follows:

> "It shall be the duty of the (harness racing) judges to
>
> . . . . (f) Where a violation of any rule is suspected to conduct an inquiry promptly and to take such action as may be appropriate and render their report to the commission. Any action as a result of such inquiry, must be concurred in by at least two of the judges.

COUNT TWO

SEVENTEENTH: Plaintiff repeats, reiterates, and realleges each and every allegation as set forth in paragraphs "Second" through "Fifteenth" of his first cause of action with the same force and effect, as if fully set forth herein.

EIGHTEENTH: That defendants, Bertram D. Sarafan, as Chairman and Joseph H. Boyd, Jr. and Eugene J. Keogh, as Members of the New York State Racing & Wagering Board, Division of Harness Racing, have "general jurisdiction" over flats racing, harness racing and quarter racing, by virtue of Section 7951-a of the Unconsolidated Laws of the State of New York, which provides as follows:

> "The regulatory agency having general jurisdiction under this act (the pari-mutuel revenue law) and all acts amendatory or supplemental hereto shall be the New York state racing and wagering board as established by article eight of this act. The board shall have all powers, functions and duties heretofore conferred by this act upon the state racing commission, the state harness racing commission or the state quarter horse racing commission and all references herein to such commissions shall be construed to refer to the board. Such commissions shall be continued as reconstituted by section two hundred three of article eight and shall have only the powers, functions and duties therein prescribed."

NINETEENTH: That by virtue of Section 7915 of the Consolidated Laws of the State of New York, licensees of defendants Bertram D. Sarafan, as chairman, and Joseph H. Boyd, Jr. and Eugene J. Keogh as Members of the New York State Racing & Wagering Board, Division of Harness Racing, that are licensed for thoroughbred racing, are not

prohibited a stay of revocation or suspension pending an administrative hearing of the charges, as prohibited by Secton 8022 of the Consolidated Laws of the State of New York, for licensees for harness racing, as set forth in paragraphs "Twelfth" and "Fourteenth" herein, the applicable provision of Section 7915 being as follows:

> "No license shall be revoked unless such revocation is at a meeting of the state racing commission on notice to the licensees who shall be entitled to a hearing in respect of such revocation. In the conduct of such the commission shall not be bound by technical rules of evidence but all evidence offered before the commission shall be reduced to writing, and such evidence together with the exhibits, if any, and the findings of the commission, shall be permanently preserved and shall constitute the record of the commission in such case. The action of the commission in refusing, suspending or in revoking a license shall be reviewable in the supreme court in the manner provided by the provisions of article seventy-eight of the civil practice law and rules. Such hearing may be held by the chairman thereof or by any commissioner designated by him in writing, and the chairman or said commissioner shall issue subpoenas for witnesses and administer oaths to witnesses. The chairman or commissioner holding such hearing shall, at the conclusion thereof, make his findings with respect thereto and said findings, if concurred in by two members of the commission, shall become the finding and determination of the commission."

that as a result of the premises, two classes are thereby impermissibly created for the discipline of horse racing licensees.

TWENTIETH: That the New York State Legislature has thereby created a discriminatory procedural plan for the

imposition of penalties against licensees of thoroughbred and harness racing personnel, the practical effect being that revocation or suspension penalties upon thoroughbred racing licensees is not effective until an administrative hearing be conducted while harness racing licensees are subjected to such revocation or suspension, without a prior administrative hearing, both of which racing activities are under the jurisdiction of New York State Racing & Wagering Board, thereby impermissibly creating two classes for disciplinary treatment, in violation of Equal Protection of Law secured by the Fourteenth Amendment.

TWENTY-FIRST: That there is no compelling state interest for the discriminatory machinery legislatively established for the treatment of violations by thoroughbred and harness racing personnel and for the said creation of two classes for disciplinary purposes.

TWENTY-SECOND: That as a result of the premises, plaintiff is entitled to judgment against defendants enjoining the enforcement and execution of Section 8022 of the Unconsolidated Laws of the State of New York and Rule 4105.8(f) promulgated in furtherance thereof and for a declaration of their invalidity as violative of Equal Protection of Law, secured by the Fourteenth Amendment, by reason of the inadequacy of the administrative appellate remedy for harness racing discipline proceedings, as distinguished from the opportunity for an administrative hearing of charges in connection with thoroughbred racing discipline proceedings prior to the imposition of punishment, as hereinbefore set forth, pursuant to 28 U.S.C. 2281.

COUNT THREE

TWENTY-THIRD: Plaintiff repeats, reiterates and realleges each and every allegation as set forth in paragraphs

"Seventeenth" through "Twenty-second" of his second cause of action with the same force and effect as if fully set forth herein.

TWENTY-FOURTH: That the investigation made by Daniel Goldberg, Chief Investigator of the New York State Racing and Wagering Board failed to uncover any evidence that plaintiff had administered the drug Lasix to the harness race horse, "Be Alert" within the prohibited 48 hour period prior to the race, but instead of evidence, defendants did rely upon the presumption created by Rules 4120.5, 4120.6 and 4116.11 of the New York State Racing and Wagering Board which provide as follows:

"4120.5 Presumptions. Whenever the test or tests prescribed in section 4120.1 hereof disclose the presence in any horse of any drug, stimulant, depressant or sedative, in any amount whatsoever it shall be presumed:

(a) that the same was administered by a person or persons having the control and/or care and/or custody of such horse with the intent thereby to affect the speed or condition of such horse and the result of the race in which it participated;

(b) that it was administered within the period prohibited by subdivision (d) of Section 4120.4 of this part, and

(d) that a sufficient quantity was administered to affect the speed or condition of such animal."

"4120.6 Trainers' responsibility. A trainer shall be responsible for the condition of all horses trained by him. No trainer shall start a horse or permit a horse in his custody to be started if he knows or if by exercise of reasonable care he might have known or

have cause to believe that the horse has received any drug, stimulant, sedative, depressant, medicine or other substance that could result in a positive test. Every trainer must guard or cause to be guarded each horse trained by him in such manner and for such period of time prior to racing the horse so to prevent any person not employed by or connected with the owner or trainer from administering any drug, stimulant, sedative, depressant, or other substance resulting in a positive test."

"4116.11. Trainer's responsibility. A trainer is responsible for the condition, fitness, equipment and soundness of each horse at the time it is declared to race and thereafter when it starts in a race."

TWENTY-FIFTH: That the administratively created presumption that the unlawful drugging of a harness race horse creates a presumption that it was done by the trainer violates due process of law secured by the Fourteenth Amendment in that there is no rational connection between the fact proved, that the horse was illegally drugged, and the ultimate fact presumed that the trainer is guilty of the act or carelessly guarded against the act occurring, in that it is impossible for any person to stand guard over a horse uninterruptedly for twenty-four hours a day and there are many other persons, aside from the trainer, who have access to the horse, including but not limited to, grooms, owners, State officials, security personnel and members of the public, who might stealthfully gain access, with an interest in the outcome of the race, thereby entitling plaintiff to an injunction, prohibiting State reliance upon the presumptions created by Rules 4120.5, 4120.6 and 4116.11 of the New York State Racing & Wagering Board, and requiring the presentation of evidence of guilt, before administrative infliction of punishment.

Amended Complaint.

WHEREFORE, plaintiff demands judgment against defendants enjoining enforcement, operation and execution of Section 8022 of the Unconsolidated Laws of the State of New York and Rule 4105.8 (f) promulgated by the New York State Racing & Wagering Board in furtherance thereof and Rules 4120.5, 4120.6 and 4116.11 of the New York State Racing & Wagering Board and for a declaration of their invalidity and for an order nullifying the fifteen day suspension imposed upon plaintiff commencng on the 10th day of July, 1976 and for the appointment of a three judge court pursuant to the provisions of 28 U.S.C.A. 2281 et seq., together with the costs and disbursements and for such other and further relief as to this Court may be deemed just and proper.

BY: .....
Member of the Firm
GRECO & FARALDO
Attorneys for Plaintiff
Office & P.O. Address
125-10 Queens Boulevard
Kew Gardens, New York 11415
212-544-6800

Amended Complaint.

17 BATTERY PLACE—SUITE 1925
NEW YORK, N. Y. 10004

212-267-3838

SUBMITTED TO: Greco and Feraldo Esqs.
125-10 Queens Blvd
Kew Gardens, Queens, N.Y. 11415

CONFIDENTIAL ATTENTION: Joseph Feraldo Esq.

RE: John Barchi (Name of Subject) — June 28, 1976 (Date)

ARRANGEMENTS: The above named subject, was given a Polygraph Examination for the purpose of determining the truthfulness of the answers to the following questions.

Subject signed statements releasing all parties concerned and empowering this examiner to disclose to those in authority his opinions, as well as information elicited during said test.

PROCEDURE: A four pen Stoelting Polygraph was utilized to register changes in blood-pressure, rate and strength of pulse beat, galvanic skin response, and the respiratory pattern.

The following relevant questions were asked and the indicated answers given:

Do you intend to answer all questions on this test truthfully? YES

Amended Complaint.

Did you ever give Be Alert Laszix? No

Do you know of anyone ever giving Be Alert Laszix? No

Did you ever direct anyone to give Be Alert Laszix? No

Did you ever authorize anyone to give Be Alert Laszix? No

Was Be Alert treated wtih Anaprine on June 20, 1976 by Dr. Sadowsky? Yes

Have you lied to me on this test? No

Do you honestly believe you passed this test? Yes

POLYGRAPHIST'S OPINION: No deception was indicated in this subject's recorded responses to the above relevant questions and it is this polygraphist's opinion that he answered all these questions truthfully.

VICTOR C. KAUFMAN
Victor C. Kaufman
Polygraphist

This information is confidential and improper use thereof could subject the recipient to a possible court action.

Answer.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 Civ. 3070
(G.L.G.)

JOHN BARCHI,

Plaintiff,

against

BERTRAM D. SARAFAN, et al.,

Defendants.

Defendants, for their answer to the amended complaint herein, by their attorney, Louis J. Lefkowitz, Attorney General of the State of New oYrk, respectfully allege:

1. Deny each and every allegation contained in paragraphs "Fourteenth", "Fifteenth", "Sixteenth", "Twentieth", "Twenty-first", "Twenty-second" and "Twenty-fifth", thereof.

2. Deny each and every allegation contained in paragraph thereof designated "Thirteenth", except admit that plaintiff was suspended for a period of fifteen days pursuant to N.Y. Unconsolidated Laws § 8022 for violation of 9 N.Y.C.R.R. §§ 4120.5, 4120.6 and 4116.11.

3. Deny knowledge or information sufficient to form a belief as to so much of paragraph "Tenth" thereof as alleges that plaintiff did not treat the horse "Be Alert" with Lasix.

4. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in the second paragraph thereof designated "Thirteenth".

Answer.

5. On information and belief, admit paragraph "Eleventh" thereof.

6. Respectfully refer the Court to the official texts of the statutes and regulations referred to therein for their content.

AS AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE

7. The complaint fails to state a claim within the jurisdiction of the Court.

AS AND FOR A SECOND, SEPARATE AND COMPLETE DEFENSE

8. The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, it is respectfully requested that the complaint be dismissed.

Dated: New York, New York
August 2, 1970

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
By

ROBERT S. HAMMER
Assistant Attorney General
Attorney for Defendants
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-3394

Order to Show Cause, July 12, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

To Convene 3 Judge Court etc.

76 Civ 3070 GLG

JOHN BARCHI,

Plaintiff,

against

BERTRAM D. SARAFAN, as Chairman and JOSEPH H. BOYD, JR. and EUGENE J. KEOGH, as Members of the NEW YORK STATE RACING & WAGERING BOARD, Division of Harness Racing, HON. HUGH CAREY, Governor of the State of New York, and HON. LOUIS J. LEFKOWITZ, Attorney General of the State of New York,

Defendants.

Upon reading and filing the annexed affidavit of JOHN BARCHI, sworn to the 12th day of July, 1976, the summons and complaint herein and the Notice of Suspension, Revocation and/or Fine and all of the proceedings heretofore had,

Now, on motion of GRECO & FARALDO, attorneys for the plaintiff, it is hereby ordered, that

The defendants show cause at a Term for Motions to be held in Room 506 before United States District Judge Wm. C. Conner in the Courthouse at Foley Square, New York, New York, on the 20 day of July, 1975, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why an order should not be made and entered (1) temporarily enjoining, staying and prohibiting enforcement of the determination by defendant members of the

Order to Show Cause, July 12, 1976.

New York State Racing and Wagering Board that the trainer's license of plaintiff be suspended for fifteen days and from preventing him from, in any way, performing his duties and responsibilities as a licensed trainer in the State of New York pending determination of this action, and (2) convening a three judge Court pursuant to 28 U.S.C.A. 2281 and 2284 to enjoin enforcement of Section 8022 of the Unconsolidated Laws of the State of New York and Rules 4105.8 in furtherance thereof and 4120.5, 4120.6 and 4116.11 of the New York State Racing & Wagering Board and declaring their invalidity and for such other and further relief as to this Court may be deemed just and proper.

In the meantime, and until the hearing of this motion, defendants, their agents and employees be and they are temporarily restrained and prohibited from enforcing the determination of defendants that the trainer's license of plaintiff be suspended for Fifteen days and from preventing him from performing his duties and responsibilities as a licensed trainer in the State of New York, it is further, ordered that security in the sum of $1,500.00 shall be posted by the plaintiff w/in 48 hrs.

SUFFICIENT CAUSE APPEARING THEREFORE, LET personal service of this order to show cause, supporting papers and the summons and complaint commencing this action be served upon defendants personally by JOSEPH A. FARALDO, Attorney for plaintiff, on or before the 13th day of July, 1976, by 5 P.M., be deemed sufficient.

Dated: New York, New York
July 12, 1976
issued 4:40 P.M.

ROBERT J. WARD
U.S.D.J.

Affidavit of John Barchi, July 12, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN BARCHI,

Plaintiff,

against

BERTRAM D. SARAFAN, as Chairman and JOSEPH H. BOYD, JR. and EUGENE J. KEOGH, as Members of the NEW YORK STATE RACING AND WAGERING BOARD, Division of Harness Racing, HON. HUGH CAREY, Governor of the State of New York and HON. LOUIS J. LEFKOWITZ, Attorney General of the State of New York,

Defendant.

STATE OF NEW YORK
COUNTY OF QUEENS } ss.:

JOHN BARCHI, being duly sworn, deposes and says:

That I am the plaintiff in the within action and submit this affidavit in support of my motion for temporary injunction staying the imposition of a suspension upon me as a harness racing trainer and for the convening of a three judge court pursuant to 28 U.S.C.A. 2281 and 2284 to enjoin enforcement of Section 8022 of the Unconsolidated Laws of the State of New York and Rules 4105.8, 4120.5, 4120.6 and 4116.11 of the New York State Racing and Wagering Board and to declare them unconstitutional.

Plaintiff is a harness racing trainer, licensed by the New York State Racing & Wagering Board and trains horses at Monticello Raceway. Among the horses trained by him is "Be Alert", which is owned by one Walter Littman.

Affidavit of John Barchi, July 12, 1976.

On the 22nd day of June, 1976, "Be Alert" participated in the third race at Monticello Race Track and placed second. Two days later, on the 24th day of June, 1976, plaintiff was summoned to the office of John F. Fay, the official Steward-Presiding Judge appointed by the New York State Racing and Wagering Board to supervise all race meetings at the Monticello Raceway and given notice that urine tests had revealed the horse had improperly been treated with the drug "Lasix," in violation of Rule 4120.4 of the Rules of the State of New York Racing and Wagering Board, that prohibits such treatment to a harness racing horse within forty-eight hours of a race. Plaintiff was interrogated by Mr. Fay and denied any complicity or knowledge of such occurrence. The investigation of the charge was assigned to Daniel Goldberg, the Chief Investigator of the Board.

"Lasix" is a drug used to clear the sinus cavity of a horse and if administered shortly before a race, it will increase his endurance and therefore, his performance.

Plaintiff was never confronted with the urine specimen, nor the circumstances under which it was taken. The latter information is extremely important, in that often, these specimens are drawn from a number of horses and the possibility of a mixup in labeling is present.

Section 8022 of the Unconsolidated Laws of the State of New York* authorizes the imposition of punishment upon a licensed trainer, without a hearing as follows:

• • •

Therefore, in an effort to convince the Board that plaintiff is not guilty of the charge, he voluntarily underwent a lie detector test on the 28th day of June, 1976, by Victor C. Kaufman of New York Lie Detection Laboratories, who was hired by him, with a resulting conclusion by the examiner that he was truthful when he denied complicity in the drugging incident, a copy of the report and credentials

* Quoted at pages 8a-9a, *supra*.

Affidavit of John Barchi, July 12, 1976.

of the examiner being annexed to the complaint herein. The following day, on June 29th, 1976, defendant BOARD members had him undergo a second lie detector test, which he was informed he passed. However, he was not provided with a copy.

The Rules of the Board 4120.5, 4120.6 and 4116.11 provide* that from the fact that a harness racing horse has been drugged, it can be presumed that it was done by the trainer or he negligently failed to guard against such occurrence. The Rules read as follows:

• • •

Relying upon these administrative presumptions, effective July 10th, 1976, defendants members of the BOARD suspended plaintiff for fifteen days for violation of the aforesaid rules by the alleged administration of Lasix to "BE ALERT". Plaintff was not afforded any type of hearing prior to the imposition of punishment.

A suspension of this type can cost a trainer his clientele of owners for whom he trains horses. The owners are required to hire new trainers, since it is self-evident that there can be no hiatus in the care of a horse. This may very well result in the owner not returning to the suspended trainer after the suspension is over. Moreover, the trainer is deprived of his livelihood during the period of suspension, which can well result in a five or ten thousand dollar loss. The bulk of the income of trainers often depends upon racing events and therefore, is sporadic. It is therefore clear that such suspension can result in irreparable damage for which there is no remedy at law, by reason of possible loss of owners and income that can never be made up.

Section 8002 of the Unconsolidated Laws provides an administrative appellate remedy to the Commission, but which is entirely inadequate because of the statute pro-

* Quoted at pages 14a-15a, *supra*.

hibits a temporary stay of penalty, providing that "pending such hearing and final determination thereon, the action of the commission . . . in revoking or suspending a license . . . shall remain in full force and effect." In this case, it is not possible for the administrative appeal to be heard before the fifteen day suspension is completed. Therefore, plaintiff is effectively deprived of any administrative remedy and therefore, there is none for him to exhaust.

28 U.S.C.A. 2281 authorizes an injunction against enforcement of a State statute by a three judge court, as follows:

• • •

28 U.S.C.A. 2284 authorizes a temporary injunction to prevent irreparable damage:

• • •

Section 8022 of the Unconsolidated Laws of the State of New York is unconstitutional in that it authorizes administrative punishment depriving a person of his livelihood, without hearing. Although such type ex parte administrative action has been upheld in certain specific instances, it has always been required that the agency make a showing of an emergency situation and adequate review provisions before such procedure can be given judicial approval. In the case at bar, no emergency can be shown to dispense with the Constitutional requirement of hearing to precede punishment. Nor is the administrative appeal process adequate. As pointed out, the loss of income the suspension is in effect can never be received, (sic) should the administrative appeal turn favorably toward the trainer. And the danger of the loss of his clientele by reason of the suspension requires sensitive hearing procedures before such drastic punishment can be imposed, with its far reaching consequences to his right to earn a livelihood.

In the case at bar, a three judge court should be convened to enjoin operation of Section 8022. Moreover, the status quo should be preserved by a temporary injunction and restraining order against the imposition of the suspension. On the issue of balancing, defendants will not suffer at all by the delay in the commencement of the punishment should defendants ultimately prevail in this action. But plaintiff will be irreparably and irretrievably damaged, not only by loss of income from the deprivation of his right to engage in his occupation, but loss of clientele that may never return.

Of course, there is no possibility that this action can ever become moot, in view of the continuous danger that plaintiff faces to his livelihood by reason of the Unconstitutional procedures of the Board.

It is also significant that the Rules of the Board allowing an inference to be drawn that the trainer is guilty of drugging a horse in his charge or of negligence resulting in such drugging is constitutionally impermissible from the mere fact that the horse has been drugged. It is not possible for a trainer to guard a horse twenty-four hours a day. Grooms, owners, State officials, security personnel and race track personnel have the same access to the horses as does the trainer. Moreover, a member of the public, bent upon drugging a horse on whom he has wagered, can always gain access to the stall. The evidentiary shortcut established by administrative fiat is Constitutionally unacceptable, where it can result in the loss of livelihood in a Constitutionally protected occupation.

In view of the need for speed in service of these papers, including summons and complaint provision should be made for service by deponent, including process, in view of the administrative delay where service is made by the United States Marshall.

Affidavit of John Barchi, July 12, 1976.

That no prior application has been made to any Court or Judge for this relief.

WHEREFORE, plaintiff demands an order (1) temporarily enjoining, staying and prohibiting the enforecement of the determination by the defendant members of the New York State Racing and Wagering Board that the trainer's license of plaintiff be suspended for fifteen days and from preventing him from, in any way, performing his duties and responsibilities as a licensed trainer in the State of New York, pending determination of this action and (2) convening a three judge Court pursuant to 28 U.S.C. 2281 and 2284 to enjoin enforcement of Section 8022 of the Unconsolidated Laws of the State of New York and Rule 4105.8 in furtherance thereof and 4120.5 and 4120.6 and 4116.11 of the New York State Racing & Wagering Board, and declaring their invalidity and for such other and further relief as to this Court may be deemed just and proper.

(Sworn to by John Barchi this 12 day of July 1976.)

Affidavit of John Barchi, July 12, 1976.

NEW YORK STATE RACING AND WAGERING BOARD
DIVISION OF HARNESS RACING
TWO WORLD TRADE CENTER
NEW YORK, N.Y. 10047

NOTICE No. NR#126

NOTICE OF SUSPENSION, REVOCATION AND/OR FINE

7/8/76

John Barchi (Name of Person)	Trainer-Driver (Licensed as)
Westbury, LI, New York (City and State)	997 (New York State Harness Racing License Number)
Dob 4/10/43 (Social Security Number)	Monticello Raceway (Place of occurrence)
	6/22/76 (Date of occurrence)

You are hereby notified that You and all horses owned and/or trained by you are suspended for 15 days 7/10/76 thru 7/24/76. You are eligible to drive on July 25, 1976. Rule invoked: (If more than one so state) (Briefly Explain Reasons) 4120 Sections 5 and 6—Trainer's responsibility rule—in that the horse Be Alert while under your care and training, raced in the 3rd race at Monticello Raceway on June 22, 1976, from which a urine sample was taken and the drug Lasix was found in the horse's system.

FOR MAIN OFFICE USE

Date Paid .....
Fine Recepit No. .....
Entered By .....

JOHN F. FAY
(Signature)
John F. Fay, Presiding Judge-Steward
(Official Title)

Supplemental Affidavit of Joseph Faraldo, July 19, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 CIV 3070 GLG

JOHN BARCHI,

Plaintiff,

against

BERTRAM D. SARAFAN, as Chairman and JOSEPH H. BOYD, JR., and EUGENE J. KEOGH, as Members of the New York STATE RACING & WAGERING BOARD, Division of Harness Racing, HON. HUGH CAREY, Governor of the State of New York, and HON. LOUIS J. LEFKOWITZ, Attorney General of the State of New York,

Defendants.

STATE OF NEW YORK }
COUNTY OF QUEENS } ss.:

JOSEPH FARALDO, being duly sworn, deposes and says:

That he respectfully submits this Supplemental Affidavit in support of plaintiff's motion for a temporary stay of injunction prohibiting enforcement of Section 8022 of the Unconsolidated Laws of the State of New York and related administrative rules and regulations contained in this action, for a three-judge court to permanently enjoin operation of the statute.

I have represented numerous trainers, thoroughbred and harness racing charged with violation of the rules of the NEW YORK STATE RACING & WAGERING BOARD. In respect to harness race trainers, license suspension or revocation is

never stayed pending an administrative hearing since such stay is prohibited by Section 8022. However, Section 7915 of the Unconsolidated Laws of the State of New York that pertains to thoroughbred trainers does not prohibit a stay of punishment pending a hearing and, therefore, such stay is often granted.

Thus, the New York statutory scheme has created two distinct classes for the purpose of imposing punishment. Harness racing trainers must commence service of their punishment before the opportunity of a hearing. Thoroughbred trainers often receive a stay and punishment does not commence until after a hearing.

There is no state need for such differential in the procedural due process treatment for the two classes. The distinction violates the Equal Protection of the Law doctrine of the Fourteenth Amendment and for this additional reason, Section 8022 is unconstitutional.

s/ JOSEPH A. FARALDO

(Sworn to the 19th day of July, 1976.)

Affidavit of John M. Dailey, August 26, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 Civ. 3070 GLG

JOHN BARCHI,

Plaintiff,

against

BERTRAM D. SARAFAN, as Chairman, etc., et al.,

Defendants.

76 Civ. 3698 GLG

REJEAN DAIGNEAULT,*

Plaintiff,

against

BERTRAM D. SARAFAN, as Chairman, etc., et al.,

Defendants.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

JOHN M. DAILEY, being duly sworn, deposes and says:

I am Counsel to the New York State Racing and Wagering Board and am its Supervising Steward. I have been

* The *Daignault* case, raising issues similar to those in *Barchi*, was filed after August 12, 1976, the effective date of Public Law 94-381, which repealed 28 U.S.C. §§ 2281 and 2284, and was therefore not referred to a three-judge district court. However, defendants submitted a single affidavit in support of their motion to dismiss in both cases. Judgment was subsequently awarded to Daignault on the authority of the *Barchi* decision. An appeal was taken to the United States Court of Appeals for the Second Circuit, docket number 77-8474, which has been held in abeyance pending final disposition of the *Barchi* case by this Court. Material peculiar to the *Daignault* case has been omitted in this appendix.

with the Board in those capacities since 1974. As Supervising Steward, I am responsible for all racing officials in the State. From 1960 to 1970 I was Assistant Counsel to the former Harness Racing Commission. Prior to my association with the State, I trained and drove harness horses for seven years. I am fully familiar with the facts of these two cases and I make this affidavit in opposition to Plaintiffs' respective motions. The facts set forth herein are stated on the basis of public records, Board records and my conversations with track officials.

I.

Plaintiff Daigneault was suspended for fifteen days following a determination by the judges at Yonkers Raceway that he had violated Rule 4117.4(p) "driving with indifference or lack of effort".

• • •

In Barchi's case, an unsuccessful attempt had been made to determine the actual party responsible for drugging his horse. When this proved impossible, Barchi was suspended on the basis of his trainer's responsibility.

In both cases, immediate action was necessary in the view of the respective judges to protect the integrity and reputation of the sport and to insure public confidence. Historically both the tracks and the State authorities have found it imperative that harness racing be conducted fairly both in fact and in appearance. In the past, even the appearance of impropriety has resulted in disorders at the track and jeopardy to the safety of members of the public and the industry.

II.

Both plaintiffs allege that they are being treated more severely than would be the case of thoroughbred racing.

This is not the fact. Although the regulatory statutes are worded differently, the Board has always interpreted them both to authorize it in its discretion to defer or suspend any penalty imposed by track judges pending administrative review. In the instant cases, Daigneault was offered a hearing within 48 hours and refused it. Barchi never asked for a hearing and went directly to court. In practice, penalties assessed against both jockeys and harness drivers are not stayed, *ab initio*. However, where no stay is given, a prompt hearing is always offered. At the conclusion of a hearing, if the hearing officer believes it warranted he can recommend to the Board that a penalty be suspended until the minutes of the hearing are transcribed and placed before the Board for more thorough consideration. Thus an adequate, meaningful administrative remedy was available to both plaintiffs. Any doubts about this or as to the proper interpretation of the State statutes and regulations should be the subject of abstention in favor of the State courts.

III.

Apart from the fact that thoroughbred, harness and quarter horse racing are governed by different sets of laws and regulations, and historical differences that the Board intends to eliminate wherever possible, there are factual differences in "flat" and "harness" racing that results in different treatment of the two forms. In harness racing, medication is prohibited within 48 hours of a race. This is possible since at Monticello, for example, horses are entered three days in advance of a race. In flat racing, at Aqueduct and Belmont, entries are made only one day prior to the race. In harness racing, the horses for all of the day's racing are brought into the paddock, which is a secure area under State supervision, prior to the start of the first race. There

the horses "warm up", something that is necessary because of the "unnatural" gait of a trotter or pacer. At the same time, pre-race tests are performed to determine if a horse has been drugged. Thoroughbreds are too skittish to be kept in a paddock with other horses except immediately prior to the race in which they are to compete. Pre-race testing has never been deemed feasible by the thoroughbred industry. While it is possible for a drug not to be detected by a pre-race test, in harness racing the probabilities are stronger that if a post-race test uncovers drugs in a horse's blood or urine it is the result of an attempted fraud. For this reason, the integrity and reputation of the sport requires more immediate action on the part of track and Board officials where a post-rate positive drug test follows a pre-race negative test.

For the foregoing reasons and for the reasons set forth in Counsel's memorandum of law and upon oral argument, it is respectfully requested that plaintiffs' respective motions be denied and that their complaints be dismissed.

s/ JOHN M. DAILEY

(Sworn to this 26th day of August, 1976.)

Affidavit of Joseph A. Faraldo, filed September 3, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN BARCHI,

Plaintiff,

—against—

BERTRAM D. SARAFAN, as Chairman and JOSEPH H. BOYD, JR., and EUGENE J. KOEGH, as Members of the New York State Racing and Wagering Board, Division of Harness Racing, HON. HUGH CAREY, Governor of the State of New York, and HON. LOUIS J. LEFKOWITZ, Attorney General of the State of New York,

Defendants.

STATE OF NEW YORK }
COUNTY OF QUEENS } ss.:

JOSEPH A. FARALDO, being duly sworn, deposes and says:

That I submit this affidavit in reply to the affidavit of John Dailey, counsel to the New York State Racing & Wagering Board.

That the affidavit in opposition submitted by Mr. Dailey admits that the "regulatory statutes are worded differently". However, Mr. Dailey denies that the plaintiff Barchi is being treated differently than his counterpart would be in thoroughbred racing. John Barchi was never given, nor was he offered an opportunity to be heard. What John Barchi received was a Notice of Suspension effective immediately with the so called "right" to file a Notice of Appeal within 10 days. By the time John Barchi would be heard, and in view of the explicit language of § 8022 of the Unconsolidated Laws of the State of New

Affidavit of Joseph A. Faraldo, filed September 3, 1976.

York prohibiting the issuance of the stay to him, the question would be moot, and the irreparable damage done. This type of administrative review alleged to be adequate is totally and completely inadequate. Such treatment of harness racing licensees is the sad norm in this industry. The laws and procedures in question have been insidiously worked to condition those governed to accept the futility of appeal and to take their punishment without being heard. In April of 1976, five (5) trainers were suspended at Monticello Raceway for similar offenses to that of Barchi's. Upon information and belief, no requests for administrative review were made by any of those trainers. The statement that "where no stay is given, a prompt hearing is always afforded" has not been my experience. No adequate, meanful administrative remedy was available to John Barchi, nor the five (5) trainers in April 1976.

While there are factual differences in "flat" and "harness" racing, none of those differences justify a deprivation of procedural due process for one group of licensees and not another. The historical differences between the laws and regulations governing separate parts of the same racing industry must unfortunately be rectified by the court, since they deny equal protection of law to harness racing licensees, and the Board has no intention to rectify same. When the Board, approximately 4 days after the issuance of a temporary restraining order in the Barchi case issues a stay to a thoroughbred trainer, Veitch, for a positive test, without the necessity of his going to court, and then denies the same to Rejean Daigneault, two days after oral argument in Barchi, I respectfully submit that the Board has no intention to eliminate what it terms historical differences.

The statement by Mr. Dailey that pre-race testing has never been deemed feasible by the thoroughbred industry

Affidavit of Joseph A. Faraldo, filed September 3, 1976.

is tantamount to an admission that the thoroughbred industry can and does regulate itself and that the New York State Racing and Wagering Board has abdicated its duty vis a vis thoroughbred racing and insisted upon it vis a vis harness racing.

In the instant case, John Barchi's horse, Be Alert, was given a pre-race blood test in the paddock by officials of the New York State Racing and Wagering Board. This test his horse passed. During the three or four hour period that this horse was in the paddock, he was subject to intense security supervised by the State of New York.

I respectfully submit that from this fact the State of New York is as responsible a party if not more so, than they claim John Barchi to be.

For the foregoing reasons it is respectfully requested that the plaintiff have his motion granted.

s/ JOSEPH A. FARALDO

(Sworn to the 1st day of September, 1976.)

Affidavit of Lucien Fontaine, August 17, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 CIV 3070
GLG

JOHN BARCHI,

Plaintiff,

against

BERTRAM D. SARAFAN, as Chairman and JOSEPH H. BOYD, JR., and EUGENE J. KEOGH, as Members of the New York State Racing & Wagering Board, Division of Harness Racing, HON. HUGH CAREY, Governor of the State of New York, and HON. LOUIS J. LEFKOWITZ, Attorney General of the State of New York,

Defendants.

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

LUCIEN FONTAINE, being duly sworn, deposes and says that:

He resides at 9 Old Forge Lane, Tarrytown, New York.

He is a harness racing driver duly licensed under the laws of the State of New York and the U.S. Trotting Association.

In or about 1962, he was training 23 horses in the State of Pennsylvania, until such time as his license was suspended without a formal hearing for a period of ninety (90) days, of which he served sixty-three (63) days.

He was later informed that he was suspended because a horse that he trained came up "positive" for a prohibited drug and so, under the Pennsylvania Trainer's responsi-

Affidavit of Lucien Fontaine, August 17, 1976.

bility rule, which is almost identical with the present rule of New York State, his liability was a matter of law.

As a direct result of this suspension, he lost charge of nineteen (19) of the twenty-three horses that he trained at that time representing every horse belonging to an owner other than himself.

Your deponent suffered irreparable damage because the best stable of horses he ever had was disbanded and the considerable financial benefits of that stable were lost forever along with the years spent in building and training that stable of horses.

Because of this experience and continuation of this onerous rule, your deponent to this date has not and will never train a horse and subject his welfare and that of his family to the vulnerability of such an unreasonable and arbitrary rule.

In 1975, your deponent served a five days suspension and filed a notice of appeal in a matter concerning an alleged driving infraction. After being so penalized without a hearing, your deponent was eventually exonerated.

Your deponent was never compensated for the five lost days.

s/ LUCIEN FONTAINE

(Sworn to the 17th day of August, 1976.)

Opinion of Goettel, J. Convening Three-Judge District Court.

Reproduced in the jurisdictional statement at page 23a.

Opinion of Three-Judge District Court.

Reproduced in the jurisdictional statement at page 3a.

Final Judgment Appealed From.

Reproduced in the jurisdictional statement at page 1a.